

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Improving Public Safety Communications)	WT Docket No. 02-55
in the 800 MHz Band)	
)	
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

**COMMENTS OF
LAIDLAW TRANSIT, INC. AND AMERICAN MEDICAL RESPONSE**

Laidlaw Transit, Inc. ("LTI") and American Medical Response ("AMR"), by their attorney, hereby submit these Comments in response to the Commission's September 6, 2002 *Public Notice* seeking comments on the Consensus Plan in the above-referenced proceeding.¹ Herein, LTI and AMR states their support for the Consensus Plan if the Commission concludes that rebanding of the 800 MHz band is necessary. However, such support is conditioned on the requirement that the costs of any retuning or replacement (if necessary) of incumbent business/industrial/land transportation ("B/ILT") facilities (as well as public safety facilities) be fully funded in advance of such retuning/replacement. Any regulations that impose substantial retuning/replacement costs on the incumbent entities that have not caused the interference at issue in this proceeding, would be arbitrary and capricious.

¹ See, Public Notice, *Wireless Telecommunications Bureau Seeks Comment on 'Consensus Plan' Filed in the 800 MHZ Public Safety Interference Proceeding*, DA 02-2202 (rel. Sept. 6, 2002) ("*Public Notice*").

I. Introduction: LTI and AMR Have Significant Interests in This Proceeding.

LTI (d/b/a Laidlaw Education Services) is the largest private provider of school bus and student transportation services in the U.S. With a fleet of more than 40,000 school buses, LTI carries 2.3 million school children per day. AMR is the largest private provider of ambulance and medical transportation services in the U.S. AMR responds to more than 4 million patients per year with a fleet of more than 4,000 vehicles.

LTI, AMR, and their affiliates and subsidiaries, hold hundreds of Part 90 licenses, with thousands of mobile units, many of which are in the 800 MHz band. While the LTI licenses are primarily designated as B/ILT, most of the AMR licenses are designated as Public Safety/Special Emergency. LTI and AMR have a significant number of licenses in the General Category band (851-854 MHz) that may have to be retuned under the Consensus Plan, and thus they have a strong interest in the logistics and economics of any required retuning of facilities.

II. Guaranteed Third-Party Funding Must Precede Any Obligation of an Incumbent to Retune or Replace Its Facilities.

LTI and AMR recognize the important work done by public safety agencies and entities, and their critical need for interference-free communications. Indeed, AMR's licenses are classified as Public Safety/Special Emergency, and those facilities are used in the transportation of critically ill patients on a daily basis. Similarly, LTI's B/ILT licenses are used not just to promote the safe and efficient transportation of school children, but in emergency situations as well.

LTI and AMR also recognize that the complex interference problems that triggered this proceeding may require some retuning or replacement of 800 MHz facilities as one important remedy. While the cost 800 MHz rebanding is not known at this time, the record demonstrates that the costs for any particular system will be significant. While Nextel's original proposal included an offer of up to \$500 million to cover the costs of retuning for Public Safety entities, it made no offer regarding the costs to other incumbents, with the inference that such incumbents would have to cover their own costs. Clearly such an approach, whereby the incumbent not causing interference must pay for the cost of remedying the interference caused by the new entrant, is inconsistent with on-going practice and Commission precedent, and is unacceptable.

LTI and AMR take some comfort in the recognition in the Reply Comments filed by the proponents of the Consensus Plan that "incumbent licensees, including public safety, B/ILT and traditional SMR, should not bear the burden of relocation costs caused by the introduction of incompatible architectures in the 800 MHz band."² Nevertheless, it is clear that no arrangements for third parties to cover the costs of incumbents have been finalized yet. While such arrangements will hopefully be finalized soon, LTI and AMR want to make it clear that their support for the Consensus Plan is conditioned on the agreement by some third party or parties to fully fund the

² See, August 7, 2002 Reply Comments of APCO, et. al. ("*Consensus Party Reply Comments*").

costs incurred by incumbents to retune, or if necessary replace equipment.³ Detailed provisions for the reimbursement of the costs of all B/ILT, SMR and public safety incumbents must be included in any plan or set of Commission rules enacted as part of this proceeding. Such provisions must provide that prior to the actual date that an incumbent is obligated to retune and/or replace equipment at a particular facility to accommodate rebanding required pursuant to this proceeding, the entire funding necessary for such action is either paid directly to the incumbent, or is held in escrow by an independent agent, and available for disbursement solely upon presentation by the incumbent of documentation demonstrating completion of the required modifications. Any alternative that requires the incumbent to go back to the party funding the retuning after the work has been done in order to collect reimbursement will create incentives for “disputes” as to whether the retuning was done, and delays/denials of payment. This would place the financial burden of retuning on the incumbents who have not created the interference. Such a result would be unacceptable, and Commission rules that allow such a result, or which do not address guaranteed payment of incumbents, would be arbitrary and capricious.

³ See, May 6, 2002 Comments of Motorola, Inc. at page 25, noting that “[a]pproximately 30 to 40 percent of 800 MHZ mobiles/portables could not be retuned and would need to be replaced with new equipment.” While LTI/AMR are not suggesting that equipment clearly at the end of its useful life should be replaced by a third party because it cannot be retuned, some formula could and should be created to reflect the value of equipment that is still useful to the incumbent but for the need to retune as part of this proceeding. While such an approach has apparently been discussed in connection with public safety incumbents (See, *Consensus Party Reply Comments* at page 21), these principles must be applied to other incumbents as well.

III. Conclusion

LTI and AMR encourage the Commission to take actions to reduce the interference problems suffered by all incumbents in the 800 MHz band. LTI and AMR support the Consensus Plan if the Commission concludes that rebanding of the 800 MHz band is necessary. However, such support is conditioned on the requirement that the costs of any retuning or replacement (if necessary) of incumbent B/ILT, SMR and public safety facilities be fully funded in advance of such retuning/replacement, as described above.

Respectfully submitted,

LAIDLAW TRANSIT, INC.
AMERICAN MEDICAL RESPONSE

By: /s/ Paul J. Feldman
Paul J. Feldman
Their Attorney

FLETCHER, HEALD & HILDRETH, PLC
1300 North 17th Street
11th Floor
Arlington, Virginia 22209
(703) 812-0400

September 23, 2002